

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DEMETRIUS LOADHOLT,

Pro Se Plaintiff,
-against-

ORDER
13-CV-567 (ADS) (AKT)

COSTCO WHOLESALE CORPORATION,

Defendant.

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APPEARANCES:

Demetrius Loadholt

Plaintiff pro se
777 Logan Street
Brooklyn, NY 11208

Gallagher, Walker, Bianco & Plastaras, LLP

Attorneys for the Defendant
98 Willis Avenue
Mineola, NY 11501

By: Robert Joseph Walker, Esq.
Richard J. Calabrese, Esq.
Ivonne C. Estevez-Sarkinen, Esq.
ToniAnn Mascia, Esq., Of Counsel

SPATT, District Judge.

The Plaintiff Demetrius Loadholt (the “Plaintiff”), proceeding pro se, brings this action against the Defendant Costco Wholesale Corporation (the “Defendant”), alleging that he was maliciously prosecuted for the theft of a shopping cart belonging to the Defendant. On July 21, 2014, United States Magistrate Judge A. Kathleen Tomlinson issued a Report and Recommendation, finding that “the Plaintiff has abandoned this litigation.” (Report, pg. 5.) In this regard, Judge Tomlinson noted that the Plaintiff had failed to show up for Court appearances, including an April 9, 2014 Show Cause Hearing to explain why his case should not be dismissed based on a failure to prosecute this action. Accordingly, citing to Federal Rule of Civil Procedure 41(b), Judge Tomlinson recommended that this Court dismiss the Plaintiff’s case on the grounds that the Plaintiff has failed to comply with Judge Tomlinson’s orders and for his apparent abandonment of his lawsuit.

On July 25, 2014, the Defendant served the Report and Recommendation on the Plaintiff. To date, the Plaintiff has not objected to the Report and Recommendation and there has been no other activity in this case.

In reviewing a report and recommendation, a court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. §636(b)(1)(C). “To accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record.” Wilds v. United Parcel Serv., 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003) (citing Nelson v. Smith, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)). The Court has reviewed Judge Tomlinson’s Report and Recommendation and finds it to be persuasive and without any legal or factual errors. There being no objection to Judge Tomlinson’s Report and Recommendation, it is hereby

ORDERED, that Judge Tomlinson’s Report and Recommendation is adopted in its entirety. Pursuant to Fed. R. Civ. P. 41(b), the Court dismisses this case for the Plaintiff’s failure to prosecute this action based on the Plaintiff’s failure to comply with court orders and for his apparent abandonment of this lawsuit; and it is further;

ORDERED, that the Defendant’s counsel is directed to serve a copy of this Order upon the pro se Plaintiff forthwith via overnight mail and first-class mail and to file proof of such service onto ECF; and it is further

ORDERED, that the Clerk of the Court is directed to close the case.

SO ORDERED.

Dated: Central Islip, New York
October 3, 2014

/s/ Arthur D. Spatt
ARTHUR D. SPATT
United States District Judge